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Charles A. Miller

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WOOD, HERRON & EVANS, LLP  
2700 CAREW TOWER  
441 VINE STREET  
CINCINNATI, OH 45202

EXAMINER

KUMAR, RAKESH

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### DETAILED ACTION

Appellants reply brief dated 08/10/2009 is entered. In the appeal the appellant submits that the substantive issue in the appeal is "whether Sylvie discloses a dispenser, dispenser portion, or dispenser opening." In regards to the limitation "dispenser," it is to be noted the appellant does not use the limitation "dispenser" but rather the claim language recites "a carton for containing a plurality of articles," which is inferred to become a dispenser when the article contained in "a carton for containing a plurality of articles" is used to withdraw articles from the carton thus becoming a dispenser. Furthermore, the limitation "dispenser" does not afford with it a length of time, the carton functions as a dispenser but is generally construed to mean the carton functions as a dispenser as long as articles in the carton remain and can be still withdrawn. In this instant, the cited reference of Sylvie (FR 2761342 A1) discloses a carton **for containing** a plurality of articles as can be seen in Figure 11. The reference of Sylvie does not only suggest a carton blank formed to create a carton container for simply the purpose of disassembly of the formed carton, but rather the carton blanks are used to form a carton container to house articles within and once the articles within the carton are completely withdrawn can only then, the carton be dissembled. Thus, in the examiner's view, a carton for containing a plurality of articles is a dispenser prior to the carton disassembly because the article must be removed prior to the disassembly as taught by Sylvie.

Art Unit: 3651

In regards to the limitations “dispenser portion” or “dispenser opening,” the carton **for containing** a plurality of articles would have article within the carton. The removal of member (12; Figure 9 and 11) would not collapse the carton to a flat blank but rather the article would have to be removed from the carton first. Thus, it is understood the removal of member (12) is the dispensing portion of the dispenser opening of the carton.

The rejections as stated in the Final rejection dated 10/16/2008 are maintained.

/RAKESH KUMAR/

Examiner, Art Unit 3651

/Gene Crawford/

Supervisory Patent Examiner, Art Unit 3651